

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

**GERALD DIX,**

**Plaintiff,**

**v.**

**Case No. 08 C 4269**

**CANADIAN NATIONAL RAILWAY,  
UNION PACIFIC RAILROAD,  
METRA RAILROAD, EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Defendants.**

**METRA'S MOTION TO DISMISS**

Defendant, NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION d/b/a METRA ("METRA") moves to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure, and in support hereof, states:

1. Metra is a public corporation, organized under the Regional Transportation Authority Act, 70 ILCS 3615/1.01, 2.20 *et. seq.*, and operates trains on certain track in northeast Illinois.

2. Plaintiff claims he was injured on March 7, 2007 by virtue of a train incident, but he did not file this action in state court until June 26, 2008, more than one year from the date of the alleged tortious behavior described in the complaint. (A copy of the Complaint filed by Plaintiff in the Circuit Court of Cook County is attached hereto as Exhibit A. A copy of Metra's timely filed Motion to Dismiss is attached hereto as Exhibit B.)

3. Therefore, the one year statute of limitations under the RTA Act bars this action and mandates that it be dismissed as to Metra. 70 ILCS 3615/1.01, 5.03.

WHEREFORE, Defendant, Metra prays that this Court dismiss the Complaint, and for such relief as is deemed appropriate.

MacCabe & McGuire

By: /s/ Andrew L. Hughes  
Andrew L. Hughes  
Attorneys for Defendant,

Andrew L. Hughes, #6273477  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, Illinois 60601  
Phone: 312-357-2600  
Fax: 312-357-0317

2120 - Served 2220 - Not Served 21 - Sec. of State  
 2121 - Alias Served 2221 - Alias Not Served 2621 - Alias Sec. of State  
 Small Claims Summons (Claims not to exceed \$10,000)

CCM N751 A-150M-9/15/06 ( )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 MUNICIPAL DEPARTMENT, DISTRICT

Name All Parties

Gerald Dix Plaintiff(s)

Union Pacific Railroad Defendant(s)

1400 Douglass St, Omaha NE 68  
 Address of Defendant(s)

20081301898  
 CALENDAR ROOM 1501  
 TIME 09:30  
 21 Motor Vehicle

Case No. 21 Motor VehicleAmount Claimed: \$ 10,000.00\*Return Date: 7-25-08

Trial Date: \_\_\_\_\_

Time: \_\_\_\_\_ Room: \_\_\_\_\_

Please serve as follows: ☒ Certified Mail ☐ Sheriff Service (Plaintiff check one)

~~SUMMONS~~ SUMMONS  
 (IL Sup. Ct. Rules 281-288)

To each Defendant:

YOU ARE SUMMONED and required:

1. To file your written appearance by yourself or your attorney and pay the required fee in:

- ☒ District 1: Richard J. Daley Center; 50 West Washington, Room 602; Chicago, IL 60602  
☐ District 2: 5600 Old Orchard Rd., Rm 136; Skokie, IL 60077 ☐ District 5: 10220 S. 76th Ave., Rm 121; Bridgeview, IL 60455  
☐ District 3: 2121 Euclid, Rm 121; Rolling Meadows, IL 60008 ☐ District 6: 16501 S. Kedzie Pkwy., Rm 119; Markham, IL 60428  
☐ District 4: 1500 Maybrook Dr., Rm 236; Maywood, IL 60153

on\* 7-25-08, (Return Date)

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED.

To the officer: (Sheriff Service)

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service, and not less than 3 days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 3 days before the day for appearance.

THERE WILL BE A FEE TO FILE YOUR APPEARANCE. SEE FEES ON THE REVERSE SIDE OF THIS FORM.

Atty. No.: PRO SE-99500 Pro Se 99500

Name: Gerald Dix

Atty. for: \_\_\_\_\_

Address: 9422 S Massacuit

City/State/Zip: Oak Lawn, IL 60455

Telephone: (708) 423-3716

WITNESS, \_\_\_\_\_

JUN 21 2008  
 DOROTHY BROWN, Circuit Court Clerk

☐ Service by Certified Mail: \_\_\_\_\_ (Date)

☐ Date of Service: \_\_\_\_\_  
 (To be inserted by officer on copy left with Defendant or other person)

\*NOTICE TO PLAINTIFF: Not less than 14 or more than 40 days after issuance of Summons)

SEE REVERSE SIDE

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DUPLICATE ORIGINAL - FILE WITH SHERIFF'S OFFICE

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Gerald Dix, Plaintiff

v.

Canadian National Railway,  
Union Pacific Railroad, Metra Railroad,  
Equal Employment Opportunity  
Commission, Defendants

)  
) No. 20081501898  
) CALENDAR/ROOM 1501  
) TIME 09:30  
) FI Motor Vehicle  
) Amount Claimed: \$10,000.00  
) Return Date: 7-25-08  
)

COMPLAINT

Plaintiff, Gerald Dix complaining of Defendants, Canadian National Railway hereinafter referred to as CN, Union Pacific Railroad hereinafter referred to as UP, Metra Railroad hereinafter referred to as Metra and the Equal Employment Opportunity Commission hereinafter referred to as EEOC alleges:

1. On March 7, 2007, Defendant CN was a railroad corporation duly organized and existing and operated trains of cars along rail lines designated as "Hawthorne Yard" in the City of Chicago, Cook County, Illinois.
2. On March 7, 2007, Defendant UP was a railroad corporation duly organized and existing and operated trains of cars along rail lines designated as "Hawthorne Yard" in the City of Chicago, Cook County, Illinois.
3. On March 7, 2007, Defendant Metra Railroad, as common carrier, owned operated, managed, and maintained a commuter rail train and all engines and cars of said train over certain railroad tracks owned, operated, managed, maintained and controlled by said Defendant across "Hawthorne Yard" in the City of Chicago, Cook County, Illinois.
4. On March 7, 2007, EEOC was a federal agency which controls and manages the hiring, promotion and termination of railroad employees.
5. At the time aforesaid, Plaintiff was a fare-paying passenger on Metra train 839 South on the rail line designated as Metra SouthWest Service.
6. At the time and place aforesaid, defendants CN, Metra and UP owed plaintiff the highest duty of care as they are common carriers by rail.
7. At the time and place aforesaid, the defendant EEOC owed plaintiff the highest duty of care to insure his employment opportunities.
8. At the time and place aforesaid, the defendants were negligent and breached its highest duty of care in one or more of the following respects:

- a) CN carelessly and negligently operated, managed, maintained and controlled UP's locomotives so that as a direct and proximate result thereof UP's locomotives collided with the Metra locomotive in which Plaintiff was traveling.
- b) CN operated and moved UP's locomotives from the Hawthorne Yard to an inclined section of rail near the intersection of Canal Street and Cermak Road in the City of Chicago. All of the relevant crewmembers employed by CN carelessly and negligently did not consider setting the hand brakes on UP's locomotives as required by the rules.
- c) CN carelessly and negligently left UP's locomotives unattended with no hand brakes being set which allowed the UP locomotives to move in an uncontrolled manner until it collided with the Metra locomotive in which Plaintiff was traveling.
- d) The conductor for CN, Kelvin Stovall (Stovall) who was in charge of the operation and administration of the UP locomotives, carelessly and negligently failed to instruct the other CN crew members to ensure the UP locomotives were secure from movement.
- e) CN carelessly and negligently employed Stovall to manage, maintain and control UP locomotives at a time when CN knew or should have known that Stovall consumes cannabis and tested positive for Carboxy - THC (marijuana metabolite) soon after the aforesaid train collision.
- f) CN carelessly and negligently permits its Engineers and Conductors to operate and control UP locomotives without adequate instruction and training.
- g) UP carelessly and negligently permits untrained, unqualified and drug-addicted CN employees to operate and control its locomotives in the County of Cook and throughout the State of Illinois.
- h) UP carelessly and negligently fails to provide important safety warnings within its locomotives pertaining to the operation and control of the locomotives including rules which will prevent the locomotive from moving in an uncontrolled manner.
- i) Metra carelessly and negligently failed to notify the Plaintiff that untrained, unqualified and drug-addicted train Engineers and Conductors operate locomotives on the same rail line used by Metra SouthWest Service.
- j) Metra carelessly and negligently failed to warn the Plaintiff of the impending collision between the train in which he was traveling and the UP locomotive moving in an uncontrolled manner on the same rail line despite the fact that Metra's Engineer had adequate warning of the collision.
- k) Metra with malice intent refused to reimburse the Plaintiff for his medical treatment when one of its female employees who refused to disclose her name informed the Plaintiff that "You white men have enough already" to justify denying the Plaintiff's claim for his injuries.
- l) EEOC with malice intent, controls the hiring, promotion and termination of railroad employees without regard to a person's knowledge skills and abilities to operate and control locomotives within the County of Cook and throughout the State of Illinois in violation of 610 ILCS 95/2 and 610 ILCS 95/3.

m) As a direct or proximate cause of the EEOC control over the hiring, promotion and termination of railroad employees, unqualified, untrained and drug-addicted people operate and control locomotives in the County of Cook including the UP locomotive which collided with the Metra locomotive in which the Plaintiff was traveling.

9. That as a direct and proximate result of one or more of the foregoing wrongful acts or omissions of the Defendants CN, UP, Metra and the EEOC, the Plaintiff, Gerald Dix, was then and there injured both internally and externally, and suffered a severe shock to Plaintiff's nervous system and bruises, contusions and lacerations to Plaintiff's body, and he became and was sick and disabled and suffered and will in the future suffer great pain and discomfort and physical impairment, all of which injuries are permanent; and he has lost and will in the future lose other great gains which he would have made and acquired; and he has been and will be kept from attending to ordinary affairs and duties, and has become liable for sums of money for medical and hospital care and attention.

WHEREFORE, Plaintiff, Gerald Dix, requests judgement against Defendants, CN, UP, Metra and EEOC, a sum of TEN THOUSAND DOLLARS (\$10,000.00) plus the costs of this lawsuit

I, Gerald Dix, certify that I am the plaintiff in the above entitled action. The allegations in this complaint are true.

Gerald Dix, pro se  
9432 South Massasoit  
Oak Lawn IL 60453  
(708) 423-3946

Dated: June 26, 2008

Gerald Dix

CLERK OF THE CIRCUIT COURT  
1ST MUNICIPAL DISTRICT  
P.O. BOX 4719  
CHICAGO, IL 60680

**CERTIFIED MAIL**



7110 4397 3980 0030 2399

*Handwritten signature*

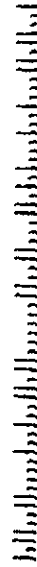
CANADIAN NATIONAL RAILWAY  
455 NORTH FRONT PLAZA DR  
CHGO IL 60611

**RECEIVED**

CANADA 606 NSC 1 707C 22 07/06/08  
NOTIFY SENDER OF NEW ADDRESS  
CANADIAN NATIONAL  
17541 ASHLAND AVE  
HOMERWOOD IL 60430-1339

EC: 604301111111 60430 00000 05-40

6043001339



FIRM CODE. 30800

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

GERALD DIX,

Plaintiff,

v.

Case No. 2008 M1 301898

CANADIAN NATIONAL RAILWAY,  
UNION PACIFIC RAILROAD, METRA  
RAILROAD, EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Defendants.

FILED-18  
08 JUL 24 PM 2:23  
CLERK  
MUNICIPAL DEPARTMENT  
COOK COUNTY  
ILLINOIS

METRA'S MOTION TO DISMISS

Defendant, NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD  
CORPORATION d/b/a METRA ("METRA") moves to dismiss the complaint pursuant to  
§2-619 of the Code of Civil Procedure, and in support hereof, states:

1. Metra is a public corporation, organized under the Regional Transportation Authority Act, 70 ILCS 3615/1.01, 2.20 *et. seq.*, and operates trains on certain track in northeast Illinois.
2. Plaintiff claims he was injured on March 7, 2007 by virtue of a train incident, but did not file this in court until June 26, 2008, more than one year from the date of the alleged tortious behavior described in the complaint. Therefore, the one year statute of limitations under the RTA Act bars this action and mandates that it be dismissed as to Metra. 70 ILCS 3615/1.01, 5.03.

WHEREFORE, Defendant, Metra prays that this Court dismiss the Complaint, and for such relief as is deemed appropriate.

By: MacCabe & McGuire  
Michael O. Vates  
Attorneys For Defendant

Michael O. Vates  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, Illinois 60601  
Phone: 312-357-2600



FIRM CODE. 30800

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

GERALD DIX,

Plaintiff,

v.

Case No. 2008 M1 301898

CANADIAN NATIONAL RAILWAY,  
UNION PACIFIC RAILROAD,  
METRA RAILROAD, EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION,

Defendants.

NOTICE OF MOTION

TO: Gerald Dix, pro se  
9432 South Massasoit  
Oak Lawn, IL 60453

On 8/4/08 at 10:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before Judge Moira S. Johnson or other Judge presiding, in Room 1501 of the Richard J. Daley Center, Chicago, Illinois, and then and there present defendant **METRA'S MOTION TO DISMISS**, a copy of which is herewith served upon you.

PROOF OF SERVICE BY MAIL

I, Michael O. Vates, the attorney, certify that I served this notice by mailing a copy to the above listed attorney at the above listed address by depositing same in the U.S. mail at 77 West Wacker Drive at 5:00 p.m. on July 24, 2008 with proper postage prepaid.

MacCabe & McGuire  
By: Michael O. Vates  
Michael O. Vates  
Attorneys For Defendant

Michael O. Vates  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, Illinois 60601  
Phone: 312-357-2600

NY Red 32-116-236 NOTICE OF MOTION - METRA

8/4  
7/30  
32-236

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08 JUL 24 PM 2:23  
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